

General Docket
United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 17-30901

Docketed: 11/13/2017

Termed: 12/20/2018

Nature of Suit: 2895 Freedom of Information Act

Michael Gahagan v. DOJ, et al

Appeal From: Eastern District of Louisiana, New Orleans

Fee Status: Fee Paid

Case Type Information:

- 1) United States Civil
- 2) United States
- 3)

Originating Court Information:

District: 053L-2 : [2:13-CV-5526](#)

Originating Judge: Kurt D. Engelhardt, U.S. District Judge

Date Filed: 08/22/2013

Date NOA Filed:

11/10/2017

Date Rec'd COA:

11/10/2017

Prior Cases:

None

Current Cases:

	Lead	Member	Start	End
Consolidated				
	17-30898	17-30901	12/05/2017	
	17-30898	17-30999	01/12/2018	
Related				
	17-30999	17-30901	01/09/2018	

Panel Assignment:

Panel: WED GJC ASO

Date of Hearing: 11/06/2018

Date of Decision: 12/20/2018

Date Completed: 12/20/2018

MICHAEL GAHAGAN
Plaintiff - Appellant

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v.

UNITED STATES DEPARTMENT OF JUSTICE
Defendant - Appellee

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UNITED STATES DEPARTMENT OF HOMELAND
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ENFORCEMENT

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EXECUTIVE OFFICE OF IMMIGRATION REVIEW, United
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(see above)









MICHAEL GAHAGAN,

Plaintiff - Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; EXECUTIVE OFFICE OF IMMIGRATION REVIEW, United States Department of Justice,


Defendants - Appellees

11/13/2017	 2 pg, 88.26 KB	US CIVIL CASE docketed. NOA filed by Appellant Mr. Michael Gahagan [17-30901] (LEF) [Entered: 11/13/2017 03:31 PM]
11/17/2017	 2 pg, 136.42 KB	INITIAL CASE CHECK by Attorney Advisor complete, Action: Case OK to Process. [8641609-2] Initial AA Check Due satisfied. [17-30901] (LEF) [Entered: 11/17/2017 10:57 AM]
11/17/2017		ELECTRONIC RECORD ON APPEAL REQUESTED FROM DISTRICT COURT for 2:13-CV-5526. Electronic ROA due on 12/04/2017. [17-30901] (LEF) [Entered: 11/17/2017 11:00 AM]
11/22/2017	 1 pg, 159.59 KB	APPEARANCE FORM received from Mr. Brock Darren Dupre for DHS, DOJ, Executive Office of Immigration Review and ICE for the court's review. Lead Counsel? Yes. [17-30901] (Brock Darren Dupre) [Entered: 11/22/2017 01:46 PM]
11/22/2017	 1 pg, 167.02 KB	APPEARANCE FORM <i>submitted for Assistant U. S. Attorney Peter M. Mansfield</i> for the court's review. Lead Counsel? No. [17-30901] (Peter M. Mansfield) [Entered: 11/22/2017 01:53 PM]
11/22/2017	 1 pg, 167.06 KB	APPEARANCE FORM <i>submitted for Assistant U. S. Attorney Kevin G. Boitmann</i> for the court's review. Lead Counsel? No. [17-30901] (Kevin G. Boitmann) [Entered: 11/22/2017 01:56 PM]
11/27/2017	 3 pg, 318.31 KB	APPEARANCE FORM <i>Mahesha P. Subbaraman</i> for the court's review. Lead Counsel? Yes. [17-30901] (Mahesha P. Subbaraman) [Entered: 11/27/2017 09:50 AM]
11/27/2017		APPEARANCE FORM FILED by Attorney Brock Darren Dupre for Appellee Executive Office of Immigration Review in 17-30901, Attorney Brock Darren Dupre for Appellee ICE in 17-30901, Attorney Brock Darren Dupre for Appellee DHS in 17-30901, Attorney Brock Darren Dupre for Appellee DOJ in 17-30901 [17-30901] (CB) [Entered: 11/27/2017 10:41 AM]
11/27/2017		APPEARANCE FORM FILED by Attorney(s) Peter M. Mansfield for party(s) Appellee DOJ Appellee DHS Appellee Executive Office of Immigration Review Appellee ICE, in case 17-30901 [17-30901] (CB) [Entered: 11/27/2017 10:43 AM]
11/27/2017		APPEARANCE FORM FILED by Attorney(s) Kevin G. Boitmann for party(s) Appellee DOJ Appellee DHS Appellee Executive Office of Immigration Review Appellee ICE, in case 17-30901 [17-30901] (CB) [Entered: 11/27/2017 10:44 AM]
11/27/2017		ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? No. Electronic ROA deadline satisfied. [17-30901] (DDL) [Entered: 11/27/2017 03:57 PM]
11/27/2017	 4 pg, 149.44 KB	BRIEFING NOTICE ISSUED A/Pet's Brief Due on 01/08/2018 for Appellant Michael Gahagan. [17-30901] (DDL) [Entered: 11/27/2017 03:57 PM]
11/28/2017		APPEARANCE FORM FILED by Attorney(s) Mahesha P. Subbaraman for party(s) Appellant Michael Gahagan, in case 17-30901 [17-30901] (CB) [Entered: 11/28/2017 10:33 AM]
12/05/2017	 2 pg, 149.02 KB	CLERK ORDER granting unopposed motion to consolidate cases 17-30898 and 17-30901 for briefing and oral argument purposes [8651444-2] ; granting unopposed motion to extend time to file appellant's brief until 01/22/2018 [8651444-3] ; granting unopposed motion to extend time to file appellees' brief until 03/07/2018 [8651444-4] ; and denying opposed motion to file principal briefs and reply brief in excess of word count limitation, filed by Appellant Mr. Michael W. Gahagan [8651444-5] . A/Pet's Brief deadline updated to 01/22/2018, for Appellant Michael W. Gahagan, in 17-30898, in 17-30901. [17-30898, 17-

12/05/2017


EXTENSION RECEIVED for Appellant Mr. Michael Gahagan. Extension Granted to and including 01/22/2018 (Deadline extended per clerk order entered this date). A/Pet's Brief deadline updated to 01/22/2018, for Appellant Michael Gahagan. [17-30901] (DLJ) [Entered: 12/05/2017 09:56 AM]

12/22/2017

 2 pg, 73.66 KB


TRANSCRIPT ORDER received advising transcript unnecessary for appeal purposes. [17-30898, 17-30901]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: TRANSCRIPT ORDER received from Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901 advising transcript unnecessary for appeal purposes. Date of Service: 12/22/2017, via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield. [17-30898, 17-30901] (Mahesha P. Subbaraman) [Entered: 12/22/2017 11:56 AM]

01/10/2018

 8 pg, 133.87 KB


UNOPPOSED MOTION filed by Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901 to consolidate cases 17-30898; 17-30901; 17-30999 for briefing and oral argument purposes, to extend time to file brief as appellant until 02/05/2018 [8677080-3], to extend time to file brief of appellee until 03/21/2018 [8677080-4]. Date of service: 01/10/2018 via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield [17-30898, 17-30901] (Mahesha P. Subbaraman) [Entered: 01/10/2018 03:17 PM]

01/12/2018

 1 pg, 139.92 KB


CLERK ORDER granting unopposed motion to consolidate case 17-30999, with cases 17-30898 and 17-30901 [8677080-2]; denying as unnecessary appellant's motion to extend time to file appellant's brief [8677080-3]; and denying as unnecessary appellant's motion to extend time to file appellee's brief [8677080-4], filed by Appellant Mr. Michael W. Gahagan, in 17-30898, 17-30901 [8678994-2]. A/Pet's Brief deadline canceled. [17-30898, 17-30901, 17-30999] (DLJ) [Entered: 01/12/2018 12:35 PM]

01/12/2018

 2 pg, 141.43 KB

LETTER OF ADVISEMENT. Reason: Advising counsel of updated case caption to be used on all future filings in these consolidated cases. [17-30898, 17-30901, 17-30999] (DLJ) [Entered: 01/12/2018 01:13 PM]

01/26/2018


 3 pg, 78.92 KB

TRANSCRIPT ORDER received advising transcript unnecessary for appeal purposes in consolidated case 17-30999. [17-30898, 17-30901, 17-30999] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: TRANSCRIPT ORDER received from Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901, 17-30999 advising transcript unnecessary for appeal purposes. Date of Service: 01/26/2018, via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield. [17-30898, 17-30901, 17-30999] (Mahesha P. Subbaraman) [Entered: 01/26/2018 09:17 AM]

01/29/2018

EXTENSION OF TIME GRANTED to the District Court to prepare the Electronic ROA for 2:15-CV-6218, in case 17-30999, until 02/14/2018. Electronic ROA deadline updated to 02/14/2018, in case 17-30999 ONLY. [17-30999, 17-30898, 17-30901] (DLJ) [Entered: 01/29/2018 02:37 PM]

02/06/2018

 3 pg, 132.19 KB


BRIEFING RESUMED. A/Pet's Brief Due on 02/20/2018 for Appellants Michael W. Gahagan and Michael Gahagan. [17-30898, 17-30901, 17-30999] (DDL) [Entered: 02/06/2018 08:48 AM]

02/07/2018

EXTENSION RECEIVED for Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901, 17-30999. Extension Granted to and including 02/27/2018. A/Pet's Brief deadline updated to 02/27/2018, for Appellants Michael W. Gahagan and

02/27/2018  0 pg, 0 KB

APPELLANT'S BRIEF FILED Additionally the Brief requires corrected caption, statement of issues must be double-spaced, certificate of service must be placed in the correct order in the brief, record citations must be corrected where Id is used. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0
A/Pet's Brief deadline satisfied. Sufficient Brief due on 03/20/2018 for Appellants Michael W. Gahagan and Michael Gahagan. Appellee's Brief due on 03/29/2018 for Appellees United States Citizenship & Immigration Services, Executive Office of Immigration Review, United States Department of Homeland Security, United States Department of Justice, United States Immigration and Customs Enforcement and U.S. Customs & Border Protection [17-30898, 17-30901, 17-30999]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S BRIEF FILED by Mr. Michael W. Gahagan in 17-30898, Mr. Michael Gahagan in 17-30901, 17-30999. Date of service: 02/27/2018 via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield [17-30898, 17-30901, 17-30999] (WITHDRAWN 3/15/18) (Mahesha P. Subbaraman) [Entered: 02/27/2018 11:29 PM]

02/27/2018  111 pg, 1.93 MB


SUFFICIENT RECORD EXCERPTS FILED. # of Copies Provided: 0 Sufficient Record Excerpts deadline satisfied. Paper Copies of Record Excerpts due on 03/19/2018 for Appellants Michael W. Gahagan. [17-30898, 17-30901, 17-30999]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RECORD EXCERPTS FILED. Record Excerpts NOT Sufficient as they require documents included as tabs 13, 14 and 15 are not part of the record and must be removed. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0 Sufficient Record Excerpts due on 03/20/2018 for Appellants Michael W. Gahagan and Michael Gahagan [17-30898, 17-30901, 17-30999] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901, 17-30999. Date of service: 02/27/2018 via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield [17-30898, 17-30901, 17-30999] (Mahesha P. Subbaraman) [Entered: 02/27/2018 11:34 PM]

03/12/2018  105 pg, 3.21 MB


UNOPPOSED MOTION for judicial notice [8723899-2], and to file corrected brief [8723899-4]. Date of service: 03/12/2018 [17-30898, 17-30901, 17-30999]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901, 17-30999 for judicial notice [8723899-2], to allow attachment to brief as a supplement [8723899-3] Attachment included? Yes, to file corrected brief [8723899-4]. Date of service: 03/12/2018 via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield [17-30898, 17-30901, 17-30999] (Mahesha P. Subbaraman) [Entered: 03/12/2018 02:10 PM]

03/12/2018  0 pg, 0 KB

PROPOSED SUFFICIENT RECORD EXCERPTS filed by Appellant Mr. Michael W. Gahagan, Appellant Mr. Michael Gahagan in 17-30898, 17-30901, 17-30999 [8713888-2] Date of service: 03/12/2018 via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield [17-30898, 17-30901, 17-30999] (Mahesha P. Subbaraman) [Entered: 03/12/2018 02:21 PM]

03/15/2018  1 pg, 136.9 KB

CLERK ORDER granting motion to file corrected brief filed by Appellant Mr. Michael W. Gahagan, Appellant Mr. Michael Gahagan [8723899-4]; mooted motion for judicial notice filed by Appellant Mr. Michael W. Gahagan, Appellant Mr. Michael Gahagan [8723899-2] [17-30898, 17-30901, 17-30999] (AGL) [Entered: 03/15/2018 07:30 AM]

03/15/2018 

CORRECTED BRIEF filed by Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901, 17-30999 ..Sufficient Brief deadline satisfied. Paper Copies of Brief due on 03/20/2018 for Appellants Michael W. Gahagan. [17-30898, 17-30901, 17-

03/15/2018

COURT ACTION withdrawing Appellant Brief filed by Appellant Mr. Michael W. Gahagan, Appellant Mr. Michael Gahagan ON 2/27/18. [\[8713887-2\]](#) [17-30898, 17-30901, 17-30999] (AGL) [Entered: 03/15/2018 07:51 AM]

03/16/2018

Paper copies of Record Excerpts filed by Appellant Mr. Michael W. Gahagan in 17-30898, 17-30901, 17-30999 received. Paper copies match electronic version of document? Yes # of Copies Provided: 4. Paper Copies of Record Excerpts due deadline satisfied. [17-30898, 17-30901, 17-30999] (AGL) [Entered: 03/16/2018 02:42 PM]

03/19/2018

Paper copies of Appellant's Brief filed by Appellant Mr. Michael W. Gahagan in 17-30898, 17-30901, 17-30999 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. Paper Copies of Brief due deadline satisfied. [17-30898, 17-30901, 17-30999] (AGL) [Entered: 03/20/2018 11:36 AM]

03/29/2018



44 pg, 285.03 KB

APPELLEE'S BRIEF FILED # of Copies Provided: 0 E/Res's Brief deadline satisfied. Reply Brief due on 04/12/2018 for Appellants Michael W. Gahagan and Michael Gahagan. Paper Copies of Brief due on 04/04/2018 for Appellees United States Citizenship & Immigration Services, Executive Office of Immigration Review, United States Department of Homeland Security, United States Department of Justice, United States Immigration and Customs Enforcement and U.S. Customs & Border Protection. [17-30898, 17-30901, 17-30999] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by United States Citizenship & Immigration Services in 17-30898, Executive Office of Immigration Review, DHS, DOJ and ICE in 17-30901, U.S. Customs & Border Protection and United States Citizenship & Immigration Services in 17-30999. Date of service: 03/29/2018 via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield [17-30898, 17-30901, 17-30999] (Peter M. Mansfield) [Entered: 03/29/2018 05:03 PM]

04/02/2018



2 pg, 140.42 KB

UNOPPOSED LEVEL 1 EXTENSION REQUESTED by Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901, 17-30999 for filing Plaintiff-Appellant Michael W. Gahagan's reply brief until 04/19/2018. [17-30898, 17-30901, 17-30999] (Mahesha P. Subbaraman) [Entered: 04/02/2018 12:26 PM]

04/02/2018

Paper copies of Appellee Brief filed by Appellee United States Citizenship & Immigration Services, Appellees DHS, DOJ, Executive Office of Immigration Review and ICE, Appellees United States Citizenship & Immigration Services and U.S. Customs & Border Protection in 17-30898, 17-30901, 17-30999 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. Paper Copies of Brief due deadline satisfied. [17-30898, 17-30901, 17-30999] (AGL) [Entered: 04/04/2018 09:35 AM]

04/03/2018







EXTENSION RECEIVED for Appellant Mr. Michael W. Gahagan in 17-30898, Appellant Mr. Michael Gahagan in 17-30901, 17-30999. Extension Granted to and including 04/19/2018. Reply Brief deadline updated to 04/19/2018 for Appellants Michael W. Gahagan and Michael Gahagan [17-30898, 17-30901, 17-30999] (AGL) [Entered: 04/03/2018 07:19 AM]

04/19/2018



34 pg, 542.4 KB

APPELLANT'S REPLY BRIEF FILED # of Copies Provided: 0 Reply Brief deadline satisfied. Paper Copies of Brief due on 04/25/2018 for Appellants Michael W. Gahagan and Michael Gahagan. [17-30898, 17-30901, 17-30999] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S REPLY BRIEF FILED by Mr. Michael W. Gahagan in 17-30898, Mr. Michael Gahagan in 17-30901, 17-30999. Date of service: 04/19/2018 via email - Attorney for Appellants: Gahagan, Subbaraman; Attorney for Appellees: Bigelow, Boitmann, Dupre, Mansfield [17-30898, 17-30901, 17-30999] (Mahesha P. Subbaraman) [Entered: 04/19/2018 11:35 PM]

04/23/2018		Paper copies of Appellant Reply Brief filed by Appellant Mr. Michael W. Gahagan, Appellant Mr. Michael Gahagan in 17-30898, 17-30901, 17-30999 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. Paper Copies of Brief due deadline satisfied. [17-30898, 17-30901, 17-30999] (SBS) [Entered: 04/26/2018 10:09 AM]
09/05/2018	 2 pg, 155.66 KB	CASE TENTATIVELY calendared for oral argument for the week of 11/05/2018. [17-30898, 17-30901, 17-30999] (GAM) [Entered: 09/05/2018 03:58 PM]
09/27/2018		CASE CALENDARED for oral argument on Tuesday, 11/06/2018 in New Orleans in the West Courtroom -- AM session. In accordance with our policy, lead counsel only will receive via email at a later date a copy of the court's docket and an acknowledgment form. All other counsel of record should monitor the court's website for the posting of the oral argument calendars.. [17-30898, 17-30901, 17-30999] (PFT) [Entered: 09/27/2018 09:12 AM]
10/30/2018	 1 pg, 207.31 KB	ORAL ARGUMENT panel has requested of the parties the following: At oral argument, the parties should be prepared to discuss: 1. Whether, under the rule of orderliness, a Supreme Court decision interpreting one statute can unequivocally overrule a Fifth Circuit decision interpreting a different statute. See <i>Diaz-Esparza v. Sessions</i> , 697 F. App'x 338, 340 (5th Cir. 2017) (per curiam), cert. granted, judgment vacated, 138 S. Ct. 1986 (2018); <i>United States v. Alcantar</i> , 733 F.3d 143, 145 (5th Cir. 2013); <i>Jacobs v. National Drug Intelligence Center</i> , 548 F.3d 375, 378 (5th Cir. 2008). 2. Whether the rule of orderliness applies differently to Supreme Court precedent interpreting federal fee-shifting statutes. See <i>Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.</i> , 532 U.S. 598, 603 n.4 (2001); <i>City of Burlington v. Dague</i> , 505 U.S. 557, 562 (1992); <i>Indep. Fed'n of Flight Attendants v. Zipes</i> , 491 U.S. 754, 758 n.2 (1989); <i>Hensley v. Eckerhart</i> , 461 U.S. 424, 433 n.7 (1983). [17-30898, 17-30901, 17-30999] (PFT) [Entered: 10/30/2018 11:22 AM]
11/06/2018		ORAL ARGUMENT HEARD before Judges Davis, Costa, Oldham. Arguing Person Information Updated for: Peter M. Mansfield arguing for Appellee United States Citizenship & Immigration Services; Arguing Person Information Updated for: Peter M. Mansfield arguing for Appellee Executive Office of Immigration Review, Appellee United States Department of Homeland Security, Appellee United States Department of Justice; Arguing Person Information Updated for: Peter M. Mansfield arguing for Appellee U.S. Customs & Border Protection; Arguing Person Information Updated for: Mahesha P. Subbaraman arguing for Appellant Michael W. Gahagan; Arguing Person Information Updated for: Mahesha P. Subbaraman arguing for Appellant Michael Gahagan; Arguing Person Information Updated for: Mahesha P. Subbaraman arguing for Appellant Michael W. Gahagan [17-30898, 17-30901, 17-30999] (PFT) [Entered: 11/06/2018 10:54 AM]
12/20/2018	 13 pg, 265.75 KB	PUBLISHED OPINION FILED. [17-30898 Affirmed 17-30901 Affirmed 17-30999 Affirmed] Judge: WED , Judge: GJC , Judge: ASO. Mandate issue date is 02/11/2019 [17-30898, 17-30901, 17-30999] (DTG) [Entered: 12/20/2018 04:53 PM]
12/20/2018	 1 pg, 37.89 KB	JUDGMENT ENTERED AND FILED. Costs Taxed Against: Appellant. [17-30898] (DTG) [Entered: 12/21/2018 07:42 AM]
12/20/2018	 1 pg, 37.53 KB	JUDGMENT ENTERED AND FILED. Costs Taxed Against: Appellant. [17-30901] (DTG) [Entered: 12/21/2018 07:46 AM]
12/20/2018	 1 pg, 37.86 KB	JUDGMENT ENTERED AND FILED. Costs Taxed Against: Appellant. [17-30999] (DTG) [Entered: 12/21/2018 07:48 AM]

